

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GILBERT MICHAEL GREENWOOD,

Plaintiff,

v.

PIERCE COUNTY, *et al.*,

Defendants.

Case No. C21-5874-JHC-MLP

ORDER DENYING PLAINTIFF'S
MOTIONS TO COMPEL DISCOVERY
AND TO DEFER CONSIDERATION OF
DEFENDANT'S SUMMARY JUDGMENT
MOTION

I. INTRODUCTION

This is a prisoner civil rights action brought under 42 U.S.C. § 1983. The claims asserted in this action arise out of Plaintiff's pretrial detention at the Pierce County Jail ("the Jail") in 2018-19 and relate to the adequacy of the medical care he received while confined at the Jail. The Jail was dismissed from this case (dkt. # 37); the only remaining defendant in this case is Defendant Miguel Balderrama. This matter is now before the Court for consideration of Plaintiff's motion to compel discovery (dkt. # 57) and his motion to defer consideration of Defendant's pending summary judgment motion (dkt. # 55). Defendant has filed a response opposing Plaintiff's motion to compel (dkt.

ORDER DENYING PLAINTIFF'S MOTIONS
TO COMPEL DISCOVERY AND TO DEFER
CONSIDERATION OF DEFENDANT'S
SUMMARY JUDGMENT MOTION - 1

63), but has not responded to Plaintiff's motion to defer consideration of his motion for summary judgment. The Court addresses the pending motions below.

II. DISCUSSION

A. Motion to Compel

Plaintiff, in his motion to compel, asks that the Court order Defendant to produce documents requested during discovery that Plaintiff claims Defendant improperly withheld. (*See* dkt. # 57.) In particular, Plaintiff asserts that Defendant withheld portions of Plaintiff's medical records and that Defendant failed to produce documentation regarding the medical procedures/protocols in place at the Pierce County Jail in 2018. (*See id.* at 1-6.) Plaintiff also complains that the medical records that were produced were not in chronological order as he had requested, and he asserts that Defendant's alleged failure to properly assemble the documents was intended "to create delay and confusion." (*See id.* at 5.)

Defendant argues in his response to Plaintiff's motion that the motion is deficient because Plaintiff made no effort to engage in a discovery conference prior to filing his motion. (*See* dkt. # 63 at 2.) Defendant further argues that Plaintiff has been provided complete responses to the requested discovery. (*Id.* at 2.) Plaintiff did not file a reply brief addressing Defendant's arguments in opposition to his motion to compel.

Rule 37(a)(1) of the Federal Rules of Civil Procedure requires that a party seeking to compel discovery include in the motion a certification that the moving party "has in good faith conferred or attempted to confer" with the party failing to make disclosures. *See* Fed. R. Civ. P. 37(a)(1). Local Civil Rule ("LCR") 37(a)(1) likewise provides that "[a]ny motion for an order compelling disclosure or discovery must include a certification, in the motion or in a declaration

1 or affidavit, that the movant has in good faith conferred or attempted to confer with the person or
2 party failing to make disclosure or discovery in an effort to resolve the dispute without court
3 action.” The rule further provides that “a good faith effort to confer with a party or person not
4 making a disclosure or discovery requires a face-to-face meeting or a telephone conference.”
5 LCR 37(a)(1).

6 Plaintiff submitted with his motion a declaration in which he states that the method by
7 which he is able to communicate is restricted to written communications, and he suggests that he
8 satisfied the requirement that he make a good faith effort to meet and confer prior to filing his
9 motion. (*See* dkt. # 58 at 1-4.) Even assuming written communications were an acceptable means
10 of satisfying the meet and confer requirement, the efforts to communicate with Defendant’s
11 counsel that Plaintiff describes in his declaration are insufficient to satisfy the good faith
12 requirement. So far as this Court can discern from Plaintiff’s declaration, when his first set of
13 discovery requests did not result in the production of all requested documents, he simply
14 reiterated his requests in a second set of requests for production. (*See id.* at 2-4.) Filing multiple
15 discovery requests does not constitute compliance with the LCR 37 meet and confer requirement.
16 Nothing in the record demonstrates that Plaintiff tried to contact Defendant’s counsel, by any
17 method, to specifically discuss his concerns regarding Defendant’s responses to his discovery
18 requests. Plaintiff’s failure to do so is fatal to his motion to compel.

19 The Court also observes that Defendant, in his response to Plaintiff’s motion to compel,
20 represents that Plaintiff has been provided complete responses to the referenced discovery,
21 despite the fact that many of Plaintiff’s discovery requests were objectionable. (*See* dkt. # 63 at
22 2.) Plaintiff’s mere submission of the motion to compel suggests that he does not believe this to
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ORDER DENYING PLAINTIFF’S MOTIONS
TO COMPEL DISCOVERY AND TO DEFER
CONSIDERATION OF DEFENDANT’S
SUMMARY JUDGMENT MOTION - 3

1 be the case, but the fact that Plaintiff may believe he received incomplete discovery does not
2 make it so. Notably, these are the types of disputes and/or misunderstandings that can typically
3 be resolved by way of the discovery conference mandated by Fed. R. Civ. P. 37(a)(1) and
4 LCR37(a)(1), the step Plaintiff did not complete. For these reasons, Plaintiff's motion to compel
5 must be denied.

6 **B. Motion to Defer Ruling on Defendant's Summary Judgement Motion**

7 Plaintiff, in his motion to defer judgment, asks that the Court defer consideration of
8 Defendant's pending motion for summary judgment, under Fed. R. Civ. P. 56(d), on the grounds
9 that Defendant's motion is premature and additional discovery is necessary to oppose summary
10 judgment. (*See* dkt. # 55.) Plaintiff first explains that through discovery directed to the lone
11 Defendant in this action, Dr. Balderrama, he determined that NaphCare, a medical service
12 company contracted to provide medical services at the Jail, was a potential defendant in this
13 case. (*See id.* at 1-2.) Plaintiff further explains that if he is permitted to add NaphCare as a
14 defendant, as he recently sought to do, additional discovery will be required. (*Id.* at 2.)

15 Plaintiff goes on to assert that Defendant's motion for summary judgment is factually
16 misleading and that additional discovery is required "to debunk the many misrepresentations
17 made in Defendant's motion[.]" (Dkt. # 55 at 2.) Plaintiff next identifies various ways in which
18 he believes Defendant's motion for summary judgment is "wrong on the merits." (*Id.* at 2-3.)
19 Finally, Plaintiff asserts that a substantial portion of Defendant's motion for summary judgment
20 is based on "NaphCare information," and he argues that he "has not had opportunity to acquire
21 discovery from NaphCare or complete discovery from Defendants." (*Id.* at 3.)

1 Rule 56(d) “provides a device for litigants to avoid summary judgment when they have
2 not had sufficient time to develop affirmative evidence.” *United States v. Kitsap Physicians*
3 *Serv.*, 314 F.3d 995, 1000 (9th Cir. 2002). Under Rule 56(d), if the nonmoving party “shows by
4 affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its
5 opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain
6 affidavits or declarations or to take discovery; or (3) issue any other appropriate order.” Fed. R.
7 Civ. P. 56(d).

8 A party requesting a continuance, denial, or other order under Fed. R. Civ. P. 56(d), must
9 show: (1) it has set forth in affidavit form the specific facts it hopes to elicit from further
10 discovery; (2) the facts sought exist; and (3) the sought-after facts are essential to oppose
11 summary judgment. *See Family Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp.*, 525
12 F.3d 822, 827 (9th Cir. 2008) (citing *California ex rel. Cal. Dep’t of Toxic Substances Control v.*
13 *Campbell*, 138 F.3d 772, 779 (9th Cir. 1998)). Failure to comply with these requirements “is a
14 proper ground for denying discovery and proceeding to summary judgment.” *Id.* (quoting *Brae*
15 *Transp., Inc. v. Coopers & Lybrand*, 790 F.2d 1439, 1443 (9th Cir. 1986)).

16 Plaintiff has submitted in support of his motion to defer consideration of Defendant’s
17 summary judgment motion the declaration required by Rule 56(d). (*See* dkt. # 56.) However,
18 Plaintiff’s declaration does not establish that he is entitled to a continuance of Defendant’s
19 motion. Plaintiff asserts in his declaration that Defendant’s motion for summary judgment relies
20 on selective events, presented out of context, “to promote a factually misleading picture of events
21 to suggest Plaintiff suffered no civil rights violations.” (*Id.* at 1.) Plaintiff claims that other facts
22 exist that “are necessary to establish a correct order of factual events that demonstrate civil rights
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1 violations.” (*Id.*) Plaintiff suggests that such facts can be found in materials that Defendant
2 intentionally withheld during discovery and in records possessed by NaphCare. (*See id.* at 1-3.)

3 The Court first notes that Defendant filed his summary judgment motion on May 11,
4 2023, which was the deadline established by the Court for such submissions. (*See* dkt. ## 45,
5 52.) All discovery was to have been completed well in advance of that deadline and, thus, it
6 cannot be said that Defendant’s motion was premature. (*See id.*) The Court next notes that it
7 recently rejected Plaintiff’s attempt to add NaphCare and three NaphCare employees as
8 Defendants to this action, along with Plaintiff’s associated request to extend the discovery
9 deadline. (*See* dkt. # 59.) Thus, to the extent Plaintiff bases his motion to continue Defendant’s
10 summary judgment motion on his need to obtain discovery from anticipated new defendants, his
11 motion identifies no viable basis for relief.

12 To the extent Plaintiff bases his motion on his suspicion that Defendant Balderamma
13 intentionally withheld discoverable material and/or relied upon NaphCare information that he did
14 not have access to, his motion likewise identifies no viable basis for relief. Plaintiff makes no
15 showing that Defendant Balderamma withheld discoverable material, nor does he make any
16 showing that additional facts exist relevant to his claims against Defendant Balderamma.
17 Plaintiff’s allegations in this regard are vague, conclusory, and insufficient to entitle him to the
18 relief he seeks.

19 The Court also observes that Plaintiff’s NaphCare medical records appear to have been
20 produced by Defendant Balderamma in response to Plaintiff’s discovery requests, and it is those
21 records that Defendant relies upon to support his summary judgment motion. (*See* dkt. # 53, Exs.
22 B-C.) Plaintiff’s suggestion that Defendant relied upon records to support his summary judgment
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1 motion that Plaintiff did not have access to is belied by the record. Finally, the Court observes
2 that after Plaintiff filed his motion to defer consideration of Defendant's summary judgment
3 motion, he filed his response to Defendant's motion, together with supporting exhibits,
4 suggesting that Plaintiff was, indeed, able to respond Defendant's motion without additional
5 delay. For these reasons, the Court concludes that Plaintiff has not met the requirements under
6 Rule 56(d) to delay consideration of Defendant's summary judgment motion and, thus,
7 Plaintiff's request is denied.

8 **3. Defendant's Summary Judgment Motion**

9 Defendant filed his summary judgment motion on May 11, 2023, and noted the motion
10 for consideration on June 2, 2023. (Dkt. # 52.) As noted above, Plaintiff filed a response to
11 Defendant's summary judgment motion together with supporting materials, but the response was
12 not filed until June 2, 2023, shortly after Plaintiff filed his motions to compel discovery and to
13 delay consideration of Defendant's summary judgment motion. (*See* dkt. #60.) Defendant filed a
14 reply brief in support of his summary judgment motion on June 2, 2023, and noted therein that
15 Plaintiff had not formally responded to his motion nor had he submitted any evidentiary material.
16 (*See* dkt. # 62.)

17 It is apparent that Defendant did not see Plaintiff's response prior to filing his reply brief.
18 While Plaintiff's response to Defendant's motion was unquestionably late, it was not egregiously
19 so. Plaintiff signed his responsive brief on May 31, 2023, two days after the filing deadline, and
20 the document was electronically filed two days after that. (Dkt. # 60 at 15.) Under these
21 circumstances, the Court deems it appropriate to accept Plaintiff's late filed brief and provide
22 Defendant an opportunity to file a supplemental reply addressing the arguments raised by
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1 Plaintiff in his response. Accordingly, the Court will set forth below a deadline by which
2 Defendant may submit a supplemental reply and will re-note Defendant's summary judgment
3 motion.

4 III. CONCLUSION

5 Based on the foregoing, the Court hereby ORDERS as follows:

6 (1) Plaintiff's motion to compel discovery (dkt. # 57), and his motion to defer
7 consideration of Defendant's pending summary judgment motion (dkt. # 55), are DENIED.

8 (2) Defendant may file a supplemental reply to Plaintiff's response to Defendant's
9 summary judgment motion not later than **July 7, 2023**, and Defendant's motion for summary
10 judgment (dkt. # 52) is RENOTED on the Court's calendar for consideration on the same date.

11 (3) The Clerk is directed to send copies of this Order to Plaintiff, to counsel for
12 Defendant, and to the Honorable John H. Chun.

13 Dated this 29th day of June, 2023.

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15 
16 MICHELLE L. PETERSON
United States Magistrate Judge